

ENTERED

December 06, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISIONORLANDA DEL CARMEN PENA ARITA, §
et al, §

Plaintiffs, §

VS. §

CIVIL ACTION NO. 7:19-CV-288

UNITED STATES OF AMERICA, *et al*, §

Defendants. §

ORDER

The Court now considers the “Joint Motion to Continue Initial [Pretrial and Scheduling] Conference, Deadline to File the Parties’ Joint Discovery and Case Management Plan, and Time for Defendant United States to Answer”¹ filed by Orlanda del Carmen Peña Arita, individually; as next friend of D.M.A. and C.M.A.; and as representative of the Estate of Marco Antonio Muñoz (“Plaintiff”) and the United States of America (“United States”). Such constitutes the second motion for continuance in this case.² To warrant a second continuance, the parties must satisfy the good cause standard.³

By leave of the Court, Plaintiff filed a second amended complaint on October 10, 2019.⁴ In the Court’s previous Order granting the first continuance of the initial pretrial and scheduling conference, the Court noted the dates and status of any service of Plaintiff’s second amended complaint on the named defendants was unclear.⁵ Since then, Plaintiff has filed proof of service for

¹ Dkt. No. 89.

² See Dkt. Nos. 62 & 77 (where the Court granted Plaintiff’s “Unopposed Motion to Continue Initial Status [Sic] Conference,” which was unopposed by the United States).

³ See Fed. R. Civ. P. 6(b).

⁴ Dkt. No. 61.

⁵ Dkt. No. 77 p. 2, n. 6–7.

Crecencio Galvan;⁶ Hector Lopez III;⁷ Rene “Orta” Fuentes;⁸ “Unknown Starr County Deputies c/o Rene “Orta” Fuentes;”⁹ (Dkt. No. 81, 11/6/19); “The County of Starr, Texas c/o Eloy Vera;”¹⁰ Alex Garcia;¹¹ Javier Vela;¹² Clyde Guerra;¹³ Raul Garcia;¹⁴ Evalario Isaac Garza;¹⁵ and Sammy Marroquin.¹⁶ For each of these defendants, the server served the summons on Armandina Martinez, the Human Resources Director with the Starr County Sheriff’s Office, on November 6, 2019.¹⁷ Importantly, these defendants are not the only defendants named in this suit.¹⁸

Yet, Plaintiff and the United States now state “Plaintiffs have [sic] successfully served their Second Amended Complaint and summons on all parties named as defendants.”¹⁹ Moreover, Plaintiff and the United States confusingly state “the deadline for the United States to answer is December 16, 2019, and the deadline for all federal officers named in the suit to answer is January 13, 2020.”²⁰ Plaintiff and the United States thus request the Court “extend Defendant United States of America’s deadline to answer Plaintiff’s Second Amended Complaint to January 13, 2020, consolidating all federal defendants’ time to answer on that date.”²¹ According to Plaintiff and the United States, “the continuances have no effect on the deadline for the remaining individual federal defendants to answer.”²²

⁶ Dkt. No. 78.

⁷ Dkt. No. 79.

⁸ Dkt. No. 80.

⁹ Dkt. No. 81.

¹⁰ Dkt. No. 82.

¹¹ Dkt. No. 83.

¹² Dkt. No. 84.

¹³ Dkt. No. 85.

¹⁴ Dkt. No. 86.

¹⁵ Dkt. No. 87.

¹⁶ Dkt. No. 88.

¹⁷ Dkt. Nos. 78–88.

¹⁸ See Dkt. No. 61 (Plaintiff’s Second Amended Complaint).

¹⁹ Dkt. No. 89 p. 2, ¶ 3.

²⁰ *Id.* ¶ 5.

²¹ Dkt. No. 89 p. 3, ¶ 17.

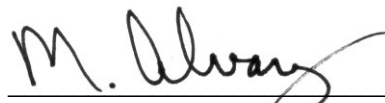
²² *Id.* ¶ 14.

Plaintiff and the United States cite to no authority providing these answer deadlines. The Court also questions the parties' provided dates and focus on the answer deadlines of the United States and "all federal officers," considering Plaintiff's November 6, 2019 service documentation, several named *state* officer defendants, and Plaintiff and the United States' instant representations that "all" defendants have been served at the time of the instant motion, December 5, 2019. Plaintiff and the United States do not even bother to identify "all federal officers." The Court further has not previously extended any answer deadlines. For these reasons, the Court finds the Plaintiff and the United States have failed to provide good cause for such continuances. The Court thus **DENIES** the motion on these grounds.

To accommodate the proposed deadlines for the United States and "all federal officers" to file an answer to Plaintiff's second amended complaint, Plaintiff and the United States also request the Court continue the December 6, 2019 deadline to file a joint discovery case management plan and the December 17, 2019 initial pretrial and scheduling conference.²³ Given the abovementioned inconsistencies and issues, the Court finds it necessary to conference in person with Plaintiff and the United States to discuss the status and anticipated progress of the case. Therefore, the Court **DENIES** the motion. The December 6, 2019 joint discovery/case management plan deadline and the December 17, 2019 initial pretrial and scheduling conference remain.²⁴

IT IS SO ORDERED.

DONE at McAllen, Texas, this 6th day of December, 2019.



Micaela Alvarez
United States District Judge

²³ See Dkt. No. 77.

²⁴ *Id.*